

ORDER NO. 2329

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langle

Inquiry Concerning Competitive Products Fund

Docket No. PI2013-1

FINAL ORDER ON COMPETITIVE PRODUCTS FUND INQUIRY

(Issued January 23, 2015)

I. INTRODUCTION

In the Fiscal Year (FY) 2012 Annual Compliance Determination Report (ACD), the Commission found that transfers between the Postal Service Fund and the Competitive Products Fund raised several issues of first impression.¹ The Commission stated that it would initiate a proceeding to review transfers from the Postal Service Fund to the Competitive Products Fund, the use of amounts from the Competitive Products Fund to prepay competitive products' future years' institutional costs, and the calculation and transfer of the assumed Federal income tax for FY 2011 and FY 2012. *Id.* (citing 39 U.S.C. § 2011(h)(2)(C)(ii) and 39 C.F.R. § 3060.42).

¹ Docket No. ACR2012, Annual Compliance Determination Report, March 28, 2013, at 175 (FY 2012 ACD).

In Order No. 1782, the Commission established this docket.² The Commission also issued Commission Information Request No. 1 (CIR No. 1) contemporaneously with Order No. 1782 in order to enhance transparency and develop a more complete record.³ The Postal Service responded to CIR No. 1 on August 2, 2013.⁴

II. BACKGROUND

In Docket No. ACR2012, the Commission found that beginning in October 2012, the National Trial Balance showed a zero balance for Account Number 12010.000 Competitive Products Investments Fund, and the corresponding Competitive Products Fund line item was eliminated from Table III-Detail of Treasury Securities Outstanding of the Monthly Statement of the Public Debt of the United States.⁵ The Postal Service informed the Commission that the zero balance likely resulted from a transfer of the balance in the Competitive Products Fund to the Postal Service Fund to prepay competitive products' shares of future years' institutional costs.⁶ The zero balance in the Competitive Products Fund raised concerns that the Postal Service would be unable to comply with 39 U.S.C. § 3634, which requires that the Postal Service transfer the assumed Federal income tax on competitive products for the previous fiscal year from the Competitive Products Fund to the Postal Service Fund by January 15th each year. ACD CHIR, question 9.

The Postal Service explained that on October 12, 2012, it had transferred the balance of the Competitive Products Fund to the Postal Service Fund as a prepayment

² Notice Establishing Docket Concerning the Competitive Products Fund, July 19, 2013 (Order No. 1782).

³ *Id.* at 3; Commission Information Request No. 1, July 19, 2013 (CIR No. 1).

⁴ Responses of the United States Postal Service to Commission Information Request No. 1, August 2, 2013 (Response to CIR No. 1).

⁵ See Docket No. ACR2012, Chairman's Information Request No. 8, February 8, 2013, question 8 (ACD CHIR).

⁶ Docket No. ACR2012, Responses of the United States Postal Service to Questions 1-6 and 8-13 of Chairman's Information Request No. 8, February 15, 2013, question 8 (ACD CHIR Response).

of future years' institutional costs. ACD CHIR Response, question 8. The Postal Service stated that the assumed Federal income tax transfer occurred on January 10, 2013 by transferring from the Postal Service Fund to the Competitive Products Fund the amount representing the FY 2012 Net Income after Tax from competitive products. *Id.* question 9. The Postal Service explained that this transfer was mathematically identical to transferring the Net Income before Tax from the Postal Service Fund to the Competitive Products Fund so that the assumed Federal income tax could be transferred back from the Competitive Products Fund to the Postal Service Fund. *Id.* On January 11, 2013, as an additional prepayment of competitive products' shares of future years' institutional costs, the Postal Service transferred the balance of the Competitive Products Fund to the Postal Service Fund. *Id.*

III. RESPONSE TO CIR NO. 1

In response to CIR No. 1, the Postal Service explained that revenues from competitive products do not automatically flow into the Competitive Products Fund. Response to CIR No. 1, question 2. The Postal Service stated that “[i]n reality, it is impossible to separate the daily revenues received by the Postal Service into competitive and non-competitive categories.” *Id.* Therefore, all daily revenues “go into the Postal Service Fund; competitive revenues must later be transferred from the Postal Service Fund into the Competitive Products Fund.” *Id.* This calculation and transfer occurs at the close of the fiscal year. *Id.* n.1. The Postal Service stated that it has not consulted with the Secretary of the Treasury concerning these payments and transfers. *Id.* question 2.

The Postal Service informed the Commission that volumes and revenues for competitive products are calculated on a monthly basis as part of the USPS Preliminary Financial Information (Unaudited) report. *Id.* question 3. Attributable costs, on the other hand, are calculated annually, after the close of the fiscal year, as part of the Annual Compliance Report. *Id.*

The Postal Service also informed the Commission that no capital commitments or expenditures in FY 2011, FY 2012, and FY 2013 were “directed exclusively toward competitive products.” *Id.* question 4. To the extent capital expenditures benefit competitive products, “such benefit is paid for through the institutional costs contribution requirement.” *Id.* In light of the long-term planning that precedes capital expenditures, the Postal Service stated that “funds would be available from the Competitive Products Fund if the Postal Service were to decide to make capital expenditures directed exclusively toward competitive products.” *Id.*

In Docket No. ACR2012, the Postal Service did not file the separate documentation required by 39 C.F.R. § 3060.41. The Postal Service explained the information required by 39 C.F.R. § 3060.41 is contained within documents filed with the Annual Compliance Report. *Id.* question 1. The Postal Service said it did not file the same information in a 39 C.F.R. § 3060.41 filing for FY 2012, because the Commission had already received the information required by 39 C.F.R. § 3060.41 as part of the Annual Compliance Report. *Id.*⁷

IV. COMMISSION FINDINGS

This proceeding was initiated pursuant to the Commission’s FY 2012 ACD to review transfers from the Postal Service Fund to the Competitive Products Fund, the use of amounts from the Competitive Products Fund to prepay competitive products’ future years’ institutional costs, and the calculation and transfer of the assumed Federal income tax. Based on the information provided in this proceeding, the Commission makes the following findings.

Transfers between Postal Service accounts. Prior to October 2012, the balance for Account Number 12010.000 Competitive Products Investments Fund in the National Trial Balance grew annually by the Net Income after Tax from competitive products. In this proceeding, the Postal Service clarified how amounts flow between the Competitive

⁷ The specific filing required by 39 C.F.R. § 3060.41 was also not made for FY 2013.

Products Fund and the Postal Service Fund, the frequency with which competitive products' revenues, volumes, and attributable costs are calculated, and the Postal Service's reasoning for withdrawing the balance of the Competitive Products Fund in October 2012. This clarifying information has provided the additional insight and transparency contemplated by the concerns raised in the FY 2012 ACD regarding how the Postal Service allocates amounts between the Competitive Products Fund and the Postal Service Fund.

Prepayment of future years' institutional costs. The Postal Service explained that it used the balance of the Competitive Products Fund to prepay competitive products' shares of future years' institutional costs. ACD CHIR Response, question 8. The use of the amounts in the Competitive Products Fund to prepay future years' institutional costs was previously examined by the Commission in Docket No. RM2012-3.⁸ In that proceeding, the Commission found that 39 U.S.C. § 3633(a)(3)'s appropriate share requirement places a limit on section 2011(a)(2)'s broad scope. *Id.* The Commission's section 3633(a)(3) implementing regulation requires the Postal Service to contribute such appropriate share "[a]nnually, on a fiscal year basis." See 39 C.F.R. § 3015.7(c). Therefore, the prepayment of future years' institutional costs is not permitted, and the revenues from competitive products rates must, in each fiscal year, satisfy the requirements of section 3633(a)(3). Order No. 1449 at 26.

To access the amounts in the Competitive Products Fund, the Postal Service is permitted by 39 C.F.R. § 3015.7(c) to pay greater than the 5.5 percent appropriate share set by the rule.⁹ In accordance with Order No. 1449, 39 U.S.C. § 3633, and 39 C.F.R. § 3015.7, the Commission finds that any transfers categorized by the Postal Service as prepayments of future years' institutional costs cannot be used to offset the

⁸ Docket No. RM2012-3, Order Reviewing Competitive Products' Appropriate Share Contribution to Institutional Costs, August 23, 2012, at 26 (Order No. 1449).

⁹ 39 C.F.R. § 3015.7(c) states that "the appropriate share of institutional costs to be recovered from competitive products collectively is, *at a minimum*, 5.5 percent of the Postal Service's total institutional costs." (emphasis added).

requirement that competitive products cover the appropriate share of institutional costs each year.

Calculation and transfer of the assumed Federal income tax. Historically, the Postal Service filed the information required by 39 C.F.R. § 3060.41 as part of the Annual Compliance Report. Although the information required by 39 C.F.R. § 3060.41 was discernable for FY 2012 and FY 2013 through other forms filed with the Annual Compliance Report, the Postal Service did not provide the information as a separate filing as contemplated by the rule.

In order to ensure transparency and alleviate any confusion associated with the location of information required by 39 C.F.R. § 3060.41, going forward, the Commission will review the Postal Service's calculations of the assumed Federal income tax on competitive products in a separate "T" docket.

On January 8, 2015, the Postal Service filed notice of its calculation of the assumed Federal income tax on competitive products for FY 2014,¹⁰ and on January 16, 2015, the Commission established Docket No. T2015-1, appointed a public representative, and requested public comments.¹¹ The Postal Service shall continue to transfer the assumed Federal income tax on competitive products annually in accordance with the requirements of 39 U.S.C. § 3634 and 39 C.F.R. § 3060.43.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Postal Service provided sufficient clarifying information to address the specific questions raised by the Commission in the FY 2012 Annual Compliance Determination Report regarding how the Postal Service allocates amounts between the Competitive Products Fund and the Postal Service Fund.

¹⁰ Docket No. T2015-1, United States Postal Service Notice of Submission of the Calculation of the FY 2014 Assumed Federal Income Tax on Competitive Products, January 8, 2015.

¹¹ Docket No. T2015-1, Order No. 2323, Notice and Order Concerning the Review of the Calculation of the Assumed Federal Income Tax on Competitive Products, January 16, 2015.

2. Transfers categorized by the Postal Service as prepayments of future years' institutional costs cannot be used to offset the requirement that competitive products cover the appropriate share of institutional costs each year.
3. For FY 2014 and future years, the Commission will review the Postal Service's calculations of the assumed Federal income tax on competitive products in a separate "T" docket.

By the Commission.

Ruth Ann Abrams
Acting Secretary